

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.10317 of 1998

Between:

LIYAKHAT ALI KHAN,

S/o. Mohd. Ghouse Khan

R/o. 5-3-5/2, Behind Police Station Town One,

MAHABUBNAGAR - 509 001.

..... PETITIONER

AND

- 1 Govt . Secretary, Minority Welfare Department,
Secretariat Buildings, Hyderabad.
- 2 A.P.State Wakf Board, Rep. by its Chairman/Secretary,

Behind Judi Mosque

King Koti Road, Hyderabad.

- 3 Zia-ul Arif-ul S/o. &aged not known
J.P. I.T.I, Mahabubnagar, through Secretary, J.P.I.T.I.
Mahabubnagar.
- 4 The Principal, J.P.I.T.I.,
Mahabubnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a order or orders or directions particularly in the nature of Writ of Mandamus or a similar Writ calling for the records pertaining to the proceedings dated 26.3.1998 appointing the third respondent as Principal, J.P.I.T.I. and declare the action of the respondents as illegal, arbitrary, bias and contrary to the notification and rules in vogue and further to set aside the appointment of third respondent as illegal, non-est

in the eyes of law and contrary to the notification and rules and further directing the second respondent to appoint the petitioner having full qualifications and is eligible for the promotion to the post of Principal in the interest of justice and further directing the respondents to pay the additional incharge allowance for the additional duties @ 20% on basic pay from March, '95 to 3.10.1997 by setting aside the memo dated 30.9.1997 of the 4th respondent as non-est in the eyes of law and contrary to the proceedings dated 2.12.1993 of the second respondent and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstance of the case.

Counsel for the Petitioner: Mr. G. RAVI MOHAN

Counsel for Respondent No.1: GP FOR MINORTIES

Counsel for Respondent No.2: Mr. A.M.QURESHI

(SC FOR AP WAKF BOARD)

Counsel for Respondent No.3: Mr. MOHD ZIA-UL HAQ

Counsel for Respondent No.4: None appeared

The Court made the following :

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the the Proceedings dated 26-3-1998 of the 3rd respondent as arbitrary, illegal and contrary to the Notification and Rules in vogue and to set aside the appointment of the 3rd respondent as illegal, arbitrary and *non est* in the eye of law and also to appoint the petitioner as Principal of JPITI, Mahabubnagar. It is also prayed to direct the respondents to pay the additional incharge allowance for the additional duty at 20% of the basic pay from March,1995 to 3-10-1997 by setting aside the Memo dated 30-9-1997 of the 4th respondent.

Heard the learned counsel for the parties and perused the entire material made available on record.

During the pendency of the Writ Petition, the 3rd respondent was removed from service and the petitioner has been appointed as regular Principal of the College. Therefore, the cause of action as to promoting the petitioner to the post of Principal does not survive.

Insofar as seeking a direction to the respondents to pay the additional incharge allowances for the additional duties at 20% is concerned, respondent No.2, in its counter affidavit, asserted that though it is true that the petitioner was given additional incharge of the post of Instructor in place of one Mirza Azhar Baig, who was absconding from duty, but it is incorrect to state that the 2nd respondent had sanctioned any additional allowance for the said extra duty and the Proceedings dated 2-12-1993 referred to by the petitioner was not issued by the 2nd respondent, but it was issued by the Governing Body, Secretary of JPITI. The petitioner was paid additional allowance at 20% of the basic pay for 16 months and 11 days and the Proceedings dated 14-7-1995 of the Secretary, Governing Body, JPITI was issued under a mistaken impression. In fact, under the Rules applicable to JPITI, the petitioner was entitled for additional allowance at the rate of 20% for the first three months and at 10% for the next three months and if he is continuing thereafter with the additional duty, he is not entitled for any extra remuneration.

The respondents have not denied the eligibility of the petitioner for the additional incharge allowance for the additional duties rendered by him during the above period. The only objection taken was that the Proceedings were issued not by the 2nd respondent, but they were issued by the Governing Body – Secretary, JPITI and even if the petitioner was to be paid the additional allowance, he is entitled at the rate of 20% for the first three months and at 10% for the next three months and thereafter he is not entitled for any remuneration. Be that as it may, since the respondents have not denied the eligibility of the petitioner for the additional incharge allowance for the additional duties, the respondents are directed to calculate and pay additional incharge allowance as applicable to the case of the petitioner, for the additional duties rendered by him from March 1995 to 3-10-1997 and pass appropriate orders, within a period of two months from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No order as to costs.

19-7-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Government Secretary, Minority Welfare Department,
Secretariat Buildings, Hyderabad.
- 2 A.P.State Wakf Board, Rep. by its Chairman/Secretary,
Behind Judi Mosque,

King Koti Road, Hyderabad.

3 The Principal, J.P.I.T.I.,
Mahabubnagar.

4 2 CCs to Govt.Pleader for Minorities, High Court Buildings, Hyderabad (OUT).

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